

Express Mail No. EV475143216US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
PATENT APPLICATION

Applicants:	Max Aebi et al.	Confirmation No.:	7507
Application No.:	10/538,950	371(c) Filing Date:	June 14, 2005
Art Unit:	3738	Examiner:	Corrine M. McDermott
Int'l Appln. No.:	PCT/CH02/00707	I.A. Filing Date:	December 17, 2002
For:	INTERVERTEBRAL IMPLANT	Attorney Docket:	8932-1182-999 (new) (formerly LUS-16100)

New York, New York 10017  
September 19, 2006

Mail Stop AMENDMENT  
Hon. Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION FOR FILING BY OTHER THAN  
ALL INVENTORS UNDER 37 C.F.R. § 1.47(a)**

Sir:

Pursuant to 37 C.F.R. § 1.47(a), Robert Frigg, Dominique Burkard, Beat Lechmann, Paul Pavlov, and Robert Mathys Jr., joint inventors of the above-identified patent application, hereby petition for entry of their Declaration that they have executed on behalf of themselves and on behalf of Max Aebi, a joint inventor who has refused to join in the above-identified application.

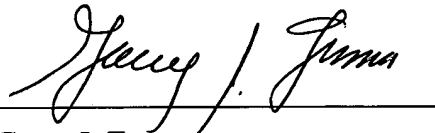
In support of this Petition, applicants submit herewith a First Statement Of Facts by Carrie A. McPherson, a patent paralegal employed by Synthes, Inc., the controlling corporation of the assignee of the above-identified application, and a Second Statement Of Facts by Garry J. Tuma, the undersigned attorney for applicants. The two Statements detail proof of pertinent facts showing that Max Aebi has refused to join in the above-identified application.

The last known address of Max Aebi is as follows:

MEM Research Center  
University of Bern  
Stauffacherstrasse 78  
CH-3014 Bern  
Switzerland

Applicants respectfully request that this Petition be granted and that their Declaration be entered.

Respectfully submitted,

A handwritten signature in cursive script, reading "Garry J. Tuma", is written over a horizontal line.

Garry J. Tuma  
Registration No. 40,210  
Attorney for Applicants

JONES DAY  
Customer No. 51832  
222 East 41st Street  
New York, New York 10017  
(212) 326-3939



Express Mail No. EV475143216US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**PATENT APPLICATION**

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Application No.:	10/538,950	371(c) Filing Date:	June 14, 2005
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New York, New York 10017  
September 19, 2006

Mail Stop AMENDMENT  
Hon. Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**INQUIRY  
REGARDING  
NOTICE OF ACCEPTANCE OF APPLICATION**

Sir:

On June 14, 2005, applicants' former representative, David E. Spaw, Esq., of Rankin, Hill, Porter & Clark LLP, filed a submission under 35 U.S.C. § 371 in connection with the above-identified application.

On March 22, 2006, the U.S. Patent and Trademark Office (USPTO) mailed a Notice Of Acceptance Of Application Under 35 U.S.C. § 371 and 35 U.S.C. § 1.495 (copy enclosed).

Applicants' current representative (the undersigned attorney of Jones Day), who reviewed the transferred file and the USPTO PAIR Web site for this application, believes that an oath or declaration by the inventors had not been submitted. Applicants enclose herewith a copy of the Transmittal Letter originally filed by applicants' former representative showing in yellow highlight the unchecked box for indicating the submission of an oath or declaration. The undersigned attorney also did not find an executed oath or declaration among the imaged documents on the USPTO PAIR Web site for this application.

Accordingly, applicants believe that the Notice Of Acceptance Of Application issued in error, and that a Notification Of Missing Requirements Under 35 U.S.C. § 371 should have issued instead.

In anticipation of the issuance of a Notification Of Missing Requirements or other similar action by the USPTO, applicants hereby submit the following:

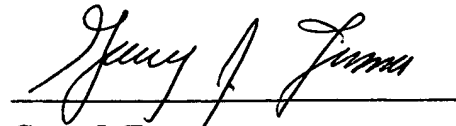
1. A copy of a partially-executed Declaration, all inventors except one having signed; and
2. A Petition For Filing By Other Than All Inventors Under 37 C.F.R. § 1.47(a), a First Statement Of Facts with attached Exhibits A and B, and a Second Statement Of Facts with attached Exhibits 1-5.

Applicants believe the fee required in connection with this Inquiry to be \$330.00 in payment of the surcharge (\$130) for late filing of the declaration set forth in 37 C.F.R. § 1.492(h) and the petition fee (\$200) set forth in 37 C.F.R. § 1.17(g). Please charge the fees

09/26/2006 GFREY1 00000067 503013 10538950  
01 FC:1463 200.00 DA

required in connection with this Inquiry to Deposit Account No. 50-3013. A duplicate copy of this Inquiry is enclosed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Garry J. Tuma", is written over a horizontal line.

Garry J. Tuma  
Registration No. 40,210  
Attorney for Applicants

JONES DAY  
Customer No. 51832  
222 East 41st Street  
New York, New York 10017  
(212) 326-3939

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**PATENT APPLICATION**

Applicants:	Max Aebi et al.	Confirmation No.:	7507
Application No.:	10/538,950		
Int'l Appln. No.:	PCT/CH02/00707	I.A. Filing Date:	December 17, 2002
For:	INTERVERTEBRAL IMPLANT	Attorney Docket:	8932-1182-999 (new) (formerly LUS-16100)

Hon. Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**FIRST STATEMENT OF FACTS  
IN SUPPORT OF A  
PETITION FOR FILING BY OTHER THAN  
ALL INVENTORS UNDER 37 C.F.R. § 1.47(a)**

Sir:

I, Carrie A. McPherson, a patent paralegal employed by Synthes, Inc., the controlling corporation of the assignee of the above-identified patent application, make this Statement in support of a Petition For Filing By Other Than All Inventors Under 37 C.F.R. § 1.47(a), submitted concurrently herewith, in connection with this application.

The joint inventors of the subject matter claimed in the above-identified patent application are Robert Frigg, Dominique Burkard, Beat Lechmann, Paul Pavlov, Robert Mathys Jr., and Max Aebi. All joint inventors except Max Aebi have executed a Declaration.

On August 22, 2006, I forwarded via e-mail to joint inventor Max Aebi, at his last known e-mail address of max.aebi@memcenter.unibe.ch, a copy of the above-identified patent application and a Declaration. In my e-mail, I asked Dr. Aebi to indicate whether or not he is able/willing to sign the Declaration, and if so, to review, sign and date the Declaration and return it to me preferably before September 12, 2006. I attach as Exhibit A a copy of my August 22, 2006 e-mail to Dr. Aebi.

I also attach as Exhibit B copies of the delivery status notification e-mail and attached text files that I received, indicating that my August 22, 2006 e-mail to Dr. Aebi was successfully delivered.

As of this date, I have not received an executed Declaration or a reply to my August 22, 2006 e-mail.

Respectfully submitted,

September 14, 2006  
Date

Carrie A. McPherson  
Carrie A. McPherson  
Patent Paralegal  
Synthes, Inc.  
1302 Wrights Lane East  
West Chester, Pennsylvania 19380  
(610) 719-5231

Attachments: Exhibits A and B



<Mcperson.Carrie@synthes.com>

08/22/2006 11:04 AM

To <max.aebi@memcenter.unibe.ch>

cc <Rauker.Robert@synthes.com>

bcc

Subject FW: PLEASE REVIEW AND REPLY Documents for  
execution - Our Ref. 00093-05PUS1 (JD Ref.  
8932-1180-999)

Dr. Max Aebi  
Director MEM Research Center for Orthopedic Surgery  
Institute of Evaluative Research in Orth. Surgery  
University of Bern  
Stauffacherstrasse 78  
CH-3014 Bern

Re: U.S. Patent Application No. 10/539,659  
Filed June 14, 2005  
Corresponding to PCT/CH02/00704  
Titled "Intervertebral Implant With Joint Parts Mounted On  
Roller Bodies"  
(00070-05PUS1; 8932-1179-999; LU1981)

U.S. Patent Application No. 10/539,660  
Filed June 14, 2005  
Corresponding to PCT/CH02/00705  
Titled "Intervertebral Implant With Tilttable Joint Parts"  
(00093-05PUS1; 8932-1180-999; LU1982)

U.S. Patent Application No. 10/538,542  
Filed June 10, 2005  
Corresponding to PCT/CH02/00706  
Titled "Intervertebral Implant Comprising Joint Parts That Are  
Mounted To Form A Universal Joint"  
(00083-05PUS1; 8932-1181-999; LU1983)

U.S. Patent Application No. 10/538,950  
Filed June 14, 2005  
Corresponding to PCT/CH02/00707  
Titled "Intervertebral Implant"  
(00082-05PSU1; 8932-1182-999; LU1984)

Dear Dr. Aebi:

Attached please find a Declaration for each of the above-identified patent applications in which you are named as an inventor. Also attached is a copy of each application as filed in the U.S. Patent and Trademark Office.

We understand from the University of Bern that you are not permitted to sign the Declarations. Please confirm that you are following the University's instructions in your refusal to sign or if you otherwise cannot or will not sign the Declarations (you do not have to tell us why).

If, however, you are able/willing to sign the Declarations, please review the attached applications and, if they are in order, please sign and date the Declarations where indicated. If any minor changes need to be made to your name and address, please make the corrections and then



initial and date the changes.

Please return the executed Declarations to me at your earliest convenience and preferably before September 12, 2006.

It is important that you let us know whether or not you are willing to execute the attached Declarations. If you refuse, the U.S. Patent and Trademark Office has a special procedure we can follow.

With best regards.

Carrie

Carrie A. McPherson  
Patent Paralegal  
Synthes, Inc.  
1302 Wrights Lane East  
West Chester, PA 19380  
Ph: 610-719-5231  
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mailto:mcpherson.carrie@synthes.com

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10539,659 Application as filed.pdf



10539,659 Declaration.pdf



10539,660 Application as filed.PDF



10539,660 Declaration.pdf



10538,542 Application as filed.pdf



10538,542 Declaration.pdf



10538,950 Application as filed.pdf



10538,950 Declaration.pdf

From: E-mail Administrator - US  
Sent: Tuesday, August 22, 2006 11:05 AM  
To: McPherson, Carrie  
Subject: Delivery Status Notification (Relay)

This is an automatically generated Delivery Status Notification.

Your message has been successfully relayed to the following recipients,  
but the requested delivery status notifications may not be generated by  
the destination.

max.aebi@memcenter.unibe.ch



ATT1860615.txt ATT1860616.txt

ATT1860615.txt

Reporting-MTA: dns;netmail.synthes.com  
Received-From-MTA: dns;us01-exchange2.synthes.com  
Arrival-Date: Tue, 22 Aug 2006 11:04:24 -0400

Final-Recipient: rfc822;max.aebi@memcenter.unibe.ch  
Action: relayed  
Status: 2.5.0

ATT1860616.txt

From: <Mcpherson.Carrie@synthes.com>  
To: <max.aebi@memcenter.unibe.ch>  
Message-ID: <E4A1E544C8F52D42A6F6DDF256FA6AF501C96626@us01-exchange2.synthes.com>  
Subject: FW: PLEASE REVIEW AND REPLY Documents for execution - Our Ref. 00093-05PUS1 (JD Ref. 8932-1180-999)

# DECLARATION (37 CFR 1.63) FOR UTILITY OR DESIGN APPLICATION USING AN APPLICATION DATA SHEET (37 CFR 1.76)

As the below named inventor(s), I/we declare that:

This declaration is directed to:

- ☐ The attached application, or  
☒ Application No. PCT/CH02/00707, filed on December 17, 2002.  
☐ as amended on \_\_\_\_\_ (if applicable);

I/we believe that I/we am/are the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought;

I/ we have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment specifically referred to above;

I/we acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including material information which became available between the filing date of the prior application and the National or PCT International filing date of the continuation-in-part application, if applicable; and

All statements made herein of my/own knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.

## FULL NAME OF INVENTOR(S)

Inventor one: AEBI Max Date: /// Bitte leer lassen  
 Signature: X Citizen of: Switzerland

Inventor two: BURKARD Dominique Date: August 12, 2005  
 Signature: D. Burkard Citizen of: Switzerland

Inventor three: FRIGG Robert Date: August 12, 2005  
 Signature: Robert Frigg Citizen of: Switzerland

Inventor four: LECHMANN Beat Date: August 12, 2005  
 Signature: Beat Lehmann Citizen of: Switzerland

☒ Additional inventors are being named on 1 additional form(s) attached hereto.

Burden Hour Statement: This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is used by the public to file (and the PTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 1 minute to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**DECLARATION (37 CFR 1.63) FOR UTILITY OR DESIGN APPLICATION USING AN  
APPLICATION DATA SHEET (37 CFR 1.76)**

As the below named inventor(s), I/we declare that:

This declaration is directed to:

- ☐ The attached application, or  
☒ Application No. PCT/CH02/00707, filed on December 17, 2002  
☐ as amended on \_\_\_\_\_ (if applicable);

I/we believe that I/we am/are the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought;

I/ we have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment specifically referred to above;

I/we acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including material information which became available between the filing date of the prior application and the National or PCT International filing date of the continuation-in-part application, if applicable; and

All statements made herein of my/own knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.

**FULL NAME OF INVENTOR(S)**Inventor one: MATHYS Robert Jun. Date: August 12, 2005Signature:  Citizen of: SwitzerlandInventor two: PAVEOV Pat Date: August 12, 2005Signature:  Citizen of: Netherlands

Inventor three: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Citizen of: \_\_\_\_\_

Inventor four: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Citizen of: \_\_\_\_\_

☐ Additional inventors are being named on \_\_\_\_\_ additional form(s) attached hereto.

Burden Hour Statement: This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is used by the public to file (and the PTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 1 minute to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicants:	Max Aebi et al.	Confirmation No.:	7507
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**SECOND STATEMENT OF FACTS  
IN SUPPORT OF A  
PETITION FOR FILING BY OTHER THAN  
ALL INVENTORS UNDER 37 C.F.R. § 1.47(a)**

Sir:

I, Garry J. Tuma, the undersigned attorney for applicants, make this Statement in support of a Petition For Filing By Other Than All Inventors Under 37 C.F.R. § 1.47(a), submitted concurrently herewith, in connection with the above-identified patent application.

The joint inventors of the subject matter claimed in the above-identified patent application are Robert Frigg, Dominique Burkard, Beat Lechmann, Paul Pavlov, Robert Mathys Jr., and Max Aebi. All joint inventors except Max Aebi have executed a Declaration, which is being submitted concurrently herewith in connection with an Inquiry Regarding Notice Of Acceptance Of Application.

On August 22, 2006, after receiving a copy of Ms. Carrie A. McPherson's e-mail of even date to joint inventor Max Aebi (please see Ms. McPherson's Statement Of Facts submitted concurrently herewith), I performed an Internet search to confirm Dr. Aebi's mailing and e-mail addresses.

At the University of Bern's Web site, I confirmed that Dr. Aebi is the director of the Institute for Evaluative Research in Orthopaedic Surgery, his e-mail address is max.aebi@memcenter.unibe.ch, and his mailing address is as follows:

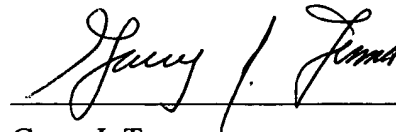
MEM Research Center  
University of Bern  
Stauffacherstrasse 78  
CH-3014 Bern  
Switzerland

See Exhibits 1-3; emphasis added.

I also attach as Exhibits 4 and 5, respectively, copies of August 10 and 16, 2005 letters from our foreign agent (Dr. Lusuardi AG) to applicants' former attorney (David E. Spaw, Esq., of Rankin, Hill, Porter & Clark LLP) indicating that joint inventor Max Aebi was already at that time refusing to sign any papers related to this patent application.

Respectfully submitted,

September 19, 2006



Garry J. Tuma  
Registration No. 40,210  
Attorney for Applicants

JONES DAY  
Customer No. 51832  
222 East 41st Street  
New York, New York 10017  
(212) 326-3939

Attachments: Exhibits 1-5

University of Bern &gt; Faculty of Medicine &gt; MEM Research Center &gt; History

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MEM Research Center

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## History

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The Maurice E. Müller Institute for Biomechanics (MIB) was established as a joint venture between the Maurice E. Müller Foundation and the Medical Faculty of the University of Bern when Prof. M.E. Müller retired, in 1981, as Chairman of the Department of Orthopaedic Surgery at the Inselspital. The Maurice E. Müller Institute for Biomechanics attained the legal status of a full University Institute on January 1st, 1995. The MIB was directed from 1981 until 1988 by Prof. Stephan S. Perren and from 1989 until 2003 by Prof. Ernst B. Hunziker.

In 2003 the MIB was dissolved and its parts were restructured: Prof. Hunziker became Director of the newly formed ITI Research Institute for Dental and Skeletal Biology and Prof. Lutz Nolte, a member of the MIB team since 1993, formed the new Institute for Surgical Technology and Biomechanics (ISTB). In conjunction with the newly created Institute for Evaluative Research in Orthopaedic Surgery (IEFO, formerly MEM-CED) directed by Prof. Max Aebi, the ISTB forms the University of Bern's M.E. Müller Research Center for Orthopaedic Surgery.

Together with clinical partners, this center realizes a unique concept for an integrated research continuum in the field of musculoskeletal science, from the bench (basic science), to the bedside (clinical application), and beyond (outcome).

In mid-2004 the MEM Research Center moved to its own facilities in the Wankdorf district of Bern. The 'new' building is actually a historical landmark, the Leinenweberei Schwob, which used to house a textiles manufacturing plant and in more recent times the Mechanical Engineering Division of the Fachhochschule Bern (University of Applied Science, .

MEM Research Center | Stauffacherstrasse 78 | CH-3014 Bern | Switzerland  
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## MEM Research Center



## Staff

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## Annual Report

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Ives	Gerber
Viktoria	Izmailova-Wapf
Fabian	Lietz
Klazien	Matter-Walstra
Markus	Melloh
Urs	Müller
Christoph	Röder
Edith	Röösli
Franziska	Schöni
Lukas	Staub
Thomas	Steffen
Özgür	Tamcan
Marcel	Widmer
Heidi	Zimmermann
Irene	Zintel



Many people have joined and left us over the years.  
For a list of former co-workers, click here.

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+41-31-631-5959 (phone) | +41-31-631-5960 (fax)

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MEM Research Center



Prof. Max Aebi, Dr. med, Dr. h.c.

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Annual Report

Job Offers

Intranet



**Position:** Director

**Phone:** +41-31-631-5932

**Email:** [max.aebi@MEMcenter.unibe.ch](mailto:max.aebi@MEMcenter.unibe.ch)

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**Dr. Lusuardi AG**

Patentanwaltsbüro

European Patent Attorneys

Conseils en propriété intellectuelle

Per telecopier only

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Bank UBS AG  
CH-8077 Zürich  
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Rankin, Hill, Porter & Clark LLP  
Att. to Mr. Spaw  
4080 Erie Street  
Willoughby, Ohio 44094- 7836  
USA

Ihr Zeichen

Ihr Brief vom

Unser Zeichen

Datum

August 10, 2005

LUS-16100

1984/US

**Re.: New national phase of PCT/CH02/00707 in the USA for  
„Intervertebral implant“  
in the name of Mathys Medizinaltechnik AG**

Dear Mr. Spaw,

Herewith we are informing that there are some internal problems between the applicant and the Inventor Prof. Max Aebi.

The reason of this problems is that Prof. Aebi is not willing to sign any documents in order to transfer the rights of the above mentioned Patent Application to the applicant.

Under this circumstances, we kindly ask you to prepare a respective document (Affidavit) to be signed by Mathys Medizinaltechnik AG (Mr. Robert Frigg, Chief Technology Officer), which enables the transfer of the above application to the applicant.

The outstanding Documents signed by the other Inventors will be sent to you as soon as possible.

Should you require more detail information, please let us know.

Looking forward to hearing from you, we remain with best regards.

Yours sincerely,

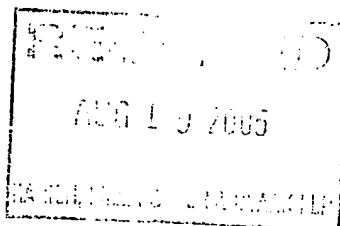
*P. Kaiser*

**Dr. Lusuardi AG**

Patentanwaltsbüro

European Patent Attorneys

Conseils en propriété intellectuelle



Air mail

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CH-8008 Zürich  
Telefon +41 (0)44 251 66 92  
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Rankin, Hill, Porter & Clark LLP  
Att. to Mr. Spaw  
4080 Erie Street  
Willoughby, Ohio 44094- 7836  
USA

Ihr Zeichen

Ihr Brief vom

Unser Zeichen

Datum

August 16, 2005

LUS-16100

1984/US

8932-1182-999

**Re.: New national phase of PCT/CH02/00707 in the USA for  
„Intervertebral implant“  
in the name of Mathys Medizinaltechnik AG**

Dear Mr. Spaw,

Please find enclosed the Originals of the Declaration and Power of Attorney as well as the Assignment Document duly signed by all Inventors except of Prof. Max Aebi due to the problems mentioned in our letter of August 10, 2005.

Please file the enclosed Documents at your Patent Office as soon as possible. As soon as we receive the Document (Affidavit) from your side, we will forward it to our clients for signing.

We thank you very much for your cooperation in this matter.

Best regards.

Yours sincerely,

Encls.:

- Declaration and Power of Attorney (Original)
- Assignment Document (Original)